

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 192

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO PRESCRIPTION DRUGS; REQUIRING THAT INSURERS AND
HEALTH MAINTENANCE ORGANIZATIONS PERMIT LICENSED PHARMACISTS TO
INITIATE THE PRIOR AUTHORIZATION PROCESS WHEN SEEKING TO FILL
PRESCRIPTIONS FOR MEDICALLY FRAGILE INDIVIDUALS; MANDATING
INSURERS TO COMPLY WITH TRANSPARENCY MEASURES; ENACTING
SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 59A, Article 22 NMSA
1978 is enacted to read:

"[NEW MATERIAL] REQUIREMENT FOR REIMBURSEMENT WHERE
PHARMACISTS INITIATE PRIOR AUTHORIZATION FOR MEDICALLY FRAGILE
INDIVIDUALS.--

A. An individual or a group health insurance
policy, health care plan or certificate of health insurance

.178027.2

underscored material = new
[bracketed material] = delete

1 that is delivered, issued for delivery or renewed in New Mexico
2 that requires covered individuals to obtain prior authorization
3 before making reimbursement for a prescription shall permit a
4 participating pharmacist licensed pursuant to the Pharmacy Act
5 to initiate the prior authorization process when seeking to
6 fill a prescription for a medically fragile individual.

7 B. An insurer shall notify a person requesting
8 prior authorization on behalf of a medically fragile covered
9 individual of its determination regarding the prior
10 authorization as expeditiously as the covered individual's
11 health condition requires, but no later than two business days
12 after the insurer receives all information that it reasonably
13 requires in instances where the request indicates that the
14 approval is necessary to protect a medically fragile
15 individual's health.

16 C. Prior authorization request information
17 regarding the procedure for submission and determination of
18 prior authorization requests shall be prominently available on
19 the insurer's web site and available to prescribers and
20 pharmacists upon request in written form.

21 D. As used in this section, "medically fragile"
22 means having a health status deemed to be medically fragile by
23 agreement between a practitioner and the individual's insurer."

24 Section 2. A new section of Chapter 59A, Article 22 NMSA
25 1978 is enacted to read:

.178027.2

1 "[NEW MATERIAL] AVAILABILITY OF FORMULARY AND PRIOR
 2 AUTHORIZATION INFORMATION.--An insurer that limits covered
 3 drugs to those listed on a formulary shall make information
 4 about each plan's formulary and prior authorization procedure
 5 available prominently on its web site and, by request, in
 6 writing. Information about the plan's formulary made available
 7 pursuant to this section shall include:

8 A. the manner in which the formulary functions,
 9 including any tiered cost-sharing structure and utilization
 10 management procedures;

11 B. the process for obtaining an exception to a
 12 plan's formulary or tiered cost-sharing structure;

13 C. a description of how a covered individual may
 14 obtain additional information regarding the formulary;

15 D. information regarding the pharmacies from which
 16 a covered individual may obtain drugs covered by the insurer;
 17 and

18 E. information regarding how covered individuals
 19 may obtain drugs at out-of-network pharmacies."

20 Section 3. A new section of Chapter 59A, Article 22 NMSA
 21 1978 is enacted to read:

22 "[NEW MATERIAL] PRESCRIPTION DRUG COVERAGE GRIEVANCES,
 23 COVERAGE DETERMINATIONS AND APPEALS PROCEDURES.--

24 A. All grievances, coverage determinations,
 25 reconsiderations, exceptions and appeal rights and procedures

.178027.2

underscored material = new
 [bracketed material] = delete

1 available to covered individuals shall be prominently displayed
2 on the plan's web site and provided in writing to insured
3 individuals upon policy issuance and renewal. This information
4 shall be provided to all pharmacies accepting reimbursement
5 from an insurer, and pharmacies shall provide this information
6 to a covered person in oral or written form whenever an adverse
7 coverage determination is made.

8 B. For the purposes of this section:

9 (1) "adverse coverage determination" means an
10 insurer's coverage determination for a prescription drug in
11 which it determines that coverage for the drug is denied or
12 reduced, subject to a condition precedent, or terminated; and

13 (2) "coverage determination" means an
14 insurer's decision as to whether or not it will pay for a
15 prescription drug for a covered individual, or whether coverage
16 for the drug will be subject to a condition precedent."

17 Section 4. A new section of Chapter 59A, Article 23 NMSA
18 1978 is enacted to read:

19 "[NEW MATERIAL] REQUIREMENT FOR REIMBURSEMENT WHERE
20 PHARMACISTS INITIATE PRIOR AUTHORIZATION FOR MEDICALLY FRAGILE
21 INDIVIDUALS.--

22 A. A blanket or group health insurance policy or
23 contract that is delivered, issued for delivery or renewed in
24 New Mexico that requires covered individuals to obtain prior
25 authorization before making reimbursement for a prescription

.178027.2

1 shall permit any participating pharmacist licensed pursuant to
2 the Pharmacy Act to initiate the prior authorization process
3 when seeking to fill a prescription for a medically fragile
4 individual.

5 B. An insurer shall notify a person requesting
6 prior authorization on behalf of a medically fragile covered
7 individual of its determination regarding the prior
8 authorization as expeditiously as the insured individual's
9 health condition requires, but no later than two business days
10 after the insurer receives all information that it reasonably
11 requires in instances where the request indicates that the
12 approval is necessary to protect a medically fragile
13 individual's health.

14 C. Prior authorization request information
15 regarding the procedure for submission and determination of
16 prior authorization requests shall be prominently available on
17 the insurer's web site and available to prescribers and
18 pharmacists upon request in written form.

19 D. As used in this section, "medically fragile"
20 means having a health status deemed to be medically fragile by
21 agreement between a practitioner and the individual's insurer."

22 Section 5. A new section of Chapter 59A, Article 23 NMSA
23 1978 is enacted to read:

24 "[NEW MATERIAL] AVAILABILITY OF FORMULARY AND PRIOR
25 AUTHORIZATION INFORMATION.--An insurer that limits covered

.178027.2

1 drugs to those listed on a formulary shall make information
2 about each plan's formulary and prior authorization procedure
3 available prominently on its web site and, by request, in
4 writing. Information about the plan's formulary made available
5 pursuant to this section shall include:

6 A. the manner in which the formulary functions,
7 including any tiered cost-sharing structure and utilization
8 management procedures;

9 B. the process for obtaining an exception to a
10 plan's formulary or tiered cost-sharing structure;

11 C. a description of how a covered individual may
12 obtain additional information regarding the formulary;

13 D. information regarding the pharmacies from which
14 a covered individual may obtain drugs covered by the insurer;
15 and

16 E. information regarding how insured persons may
17 obtain drugs at out-of-network pharmacies."

18 Section 6. A new section of Chapter 59A, Article 23 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] PRESCRIPTION DRUG COVERAGE GRIEVANCES,
21 COVERAGE DETERMINATIONS AND APPEALS PROCEDURES.--

22 A. All grievances, reconsiderations, exceptions,
23 coverage determinations and appeal rights and procedures
24 available to insured persons shall be prominently displayed on
25 the plan's web site and provided in writing to insured

.178027.2

1 individuals upon policy issuance and renewal. This information
 2 shall be provided to all pharmacies accepting reimbursement
 3 from an insurer, and pharmacies shall provide this information
 4 to a covered individual in oral or written form whenever an
 5 adverse coverage determination is made.

6 B. For the purposes of this section:

7 (1) "adverse coverage determination" means an
 8 insurer's coverage determination for a prescription drug in
 9 which it determines that coverage for the drug is denied or
 10 reduced, subject to a condition precedent, or terminated; and

11 (2) "coverage determination" means an
 12 insurer's decision as to whether or not it will pay for a
 13 prescription drug for a covered individual, or whether coverage
 14 for the drug will be subject to a condition precedent."

15 Section 7. A new section of Chapter 59A, Article 46 NMSA
 16 1978 is enacted to read:

17 "[NEW MATERIAL] REQUIREMENT FOR REIMBURSEMENT WHERE
 18 PHARMACISTS INITIATE PRIOR AUTHORIZATION FOR MEDICALLY FRAGILE
 19 INDIVIDUALS.--

20 A. An individual or group health maintenance
 21 contract that is delivered, issued for delivery or renewed in
 22 New Mexico that requires covered individuals to obtain prior
 23 authorization before making reimbursement for a prescription
 24 shall permit a participating pharmacist licensed pursuant to
 25 the Pharmacy Act to initiate the prior authorization process

.178027.2

1 when seeking to fill a prescription for a medically fragile
2 individual.

3 B. A health maintenance organization shall notify a
4 person requesting prior authorization on behalf of a medically
5 fragile covered individual of its determination regarding the
6 prior authorization as expeditiously as the covered
7 individual's health condition requires, but no later than two
8 business days after the health maintenance organization
9 receives all information that it reasonably requires in
10 instances where the request indicates that the approval is
11 necessary to protect a medically fragile individual's health.

12 C. Prior authorization request information
13 regarding the procedure for submission and determination of
14 prior authorization requests shall be prominently available on
15 the health maintenance organization's web site and available to
16 prescribers and pharmacists upon request in written form.

17 D. As used in this section, "medically fragile"
18 means having a health status deemed to be medically fragile by
19 agreement between a practitioner and the individual's insurer."

20 Section 8. A new section of Chapter 59A, Article 46 NMSA
21 1978 is enacted to read:

22 "[NEW MATERIAL] AVAILABILITY OF FORMULARY AND PRIOR
23 AUTHORIZATION INFORMATION.--A health maintenance organization
24 that limits covered drugs to those listed on a formulary shall
25 make information about each plan's formulary and prior

.178027.2

1 authorization procedure available prominently on its web site
 2 and, by request, in writing. Information about the plan's
 3 formulary made available pursuant to this section shall
 4 include:

5 A. the manner in which the formulary functions,
 6 including any tiered cost-sharing structure and utilization
 7 management procedures;

8 B. the process for obtaining an exception to a
 9 plan's formulary or tiered cost-sharing structure;

10 C. a description of how a covered individual may
 11 obtain additional information regarding the formulary;

12 D. information regarding the pharmacies from which
 13 a covered individual may obtain drugs covered by the health
 14 maintenance organization; and

15 E. information regarding how covered individuals
 16 may obtain drugs at out-of-network pharmacies."

17 Section 9. A new section of Chapter 59A, Article 46 NMSA
 18 1978 is enacted to read:

19 "[NEW MATERIAL] PRESCRIPTION DRUG COVERAGE GRIEVANCES,
 20 COVERAGE DETERMINATIONS AND APPEALS PROCEDURES.--

21 A. All grievances, coverage determinations,
 22 reconsideration, exceptions and appeal rights and procedures
 23 available to covered individuals shall be prominently displayed
 24 on the plan's web site and provided in writing to insured
 25 individuals upon policy issuance and renewal. This information

.178027.2

1 shall be provided to all pharmacies accepting reimbursement
2 from a health maintenance organization, and pharmacies shall
3 provide this information to a covered individual in oral or
4 written form whenever an adverse coverage determination is
5 made.

6 B. For the purposes of this section:

7 (1) "adverse coverage determination" means a
8 health maintenance organization's coverage determination for a
9 prescription drug where it determines that coverage for the
10 drug is denied or reduced, subject to a condition precedent, or
11 terminated; and

12 (2) "coverage determination" means a health
13 maintenance organization's decision as to whether or not it
14 will pay for a prescription drug for a covered individual, or
15 whether coverage for the drug will be subject to a condition
16 precedent."